SB 60

SENATE COMMITTEE REPORT

DATE: 4/17/09

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 60

SB 60 UNIFORM PROBATE CODE; TRUSTS, WILLS

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	2/5/10			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Coghill	✓			
		✓			
	McGuire	✓			
CHAIR:	French	✓			

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax (907) 269-0249

Co-Chair
Senate Resources Committee

Chair
Senate Special Committee on Energy
Senate Special Committee on World Trade, Technology & Innovation

Member
Senate Judiciary Committee
Joint Armed Services Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 60: Uniform Probate Code; Trusts, Wills

Inevitably, every family in Alaska must deal with handling the affairs of a deceased family member's estate or trust. The Uniform Probate Code (UPC) is the legal model Alaska has relied upon to handle these matters since it was first adopted back in 1969.

The Uniform Probate Code (UPC) is a uniform act drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) governing inheritance and the decedents' estates in the USA. The primary purpose of the act is to streamline the probate process and to standardize and modernize the various state laws governing wills, trusts, and intestacy.

SB 60 updates and clarifies Alaska statutes relating to the UPC with the aim of improving the ease of administration of estates and trusts for Alaska residents. SB 60 provides the following amendments to the Uniform Probate Code:

- Allows the settlor of a trust to designate a representative who can represent or bind an incapacitated person in future proceedings relating to the trust administration.

- Establishes that an augmented estate does not include property transferred to an irrevocable trust if the settlor is a discretionary beneficiary of the trust and if the transfer was made more than 30 days before marriage, or with the consent of the decedent's spouse.

- Creates a procedure for the establishment of will and trust validity before death. Situations arise where there is a question concerning a person's capacity to execute a will or trust, or whether the document was executed as the result of undue influence, duress, fraud, or mistake. The new procedure will allow these issues to be brought before the court while the testator or settlor is alive and when evidence is fresh.

- Provides for venue of a probate proceeding if the decedent was not domiciled in Alaska but significant assets are located within the state.

The State of Alaska has directly received millions of dollars of insurance premium tax dollars and many jobs have been created in the trust, banking, insurance, and legal professions thanks to the business attracted by our competitive and contemporary trust laws.

SB 60 is one of three bills introduced (SB 60, SB 62, and SB 63) that aim to update and clarify Alaska trust laws to make Alaska a better place for investors and families – both Alaskan and from other states – to invest their money in the competitive arena of trust management.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 17, 2009

SUBJECT: Identification of changes between CSSB 60( ) (26-LS0302\E) and 26-LS0302\A (Work Order No. 26-LS0302\E)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM: Theresa Bannister
Legislative Counsel

This memo is an identification of the changes between W.O. 26-LS0302\A and W.O. 26-LS0302\E. Unless specified otherwise, the references are to the "E" version.

Section 1. In AS 13.06.120(2)(G)(ii) and (iii), "represent or bind" replaces "represent and bind." In AS 13.06.120(3), you'll find a modified version of the non-liability language that was in version A's AS 13.06.120(2)(G)(iv); the E language adds a reference to extend the non-liability to "a person representing another person under (2)(A) - (F) of this section." In AS 13.06.120, the numbering of paragraphs (3) and (4) is changed to (4) and (5). In AS 13.06.120(4), the cross references are changed.

Section 2. In AS 13.12.201(b)(9)(C)(i), "the decedent" replaces "self."

Section 3. No difference.

Section 4. In new sec. 13.12.205(b), the conditions are changed for when the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction. See page 8, lines 7 - 9.

Section 5. No difference.

Section 6. No difference.

Section 7. No difference.

Section 8. In sec. 13.12.530, adds another category to the persons who may petition the court: an interested party with the testator's consent.

In sec. 13.12.540, removes language from (a)(2) and changes the venue rules in (b).

In sec. 13.12. 545, removes language from (11) and removes (14) from version A.

In sec. 13.12.550, removes (11) from version A.

In sec. 13.12.555, removes (b) from version A.

In sec. 13.12.560, removes "Notwithstanding AS 13.06.120" at the beginning.

In sec. 13.12.565(c), removes the reference to AS 13.36 and the last sentence of version A, requiring giving notice to certain other persons. Adds a definition of "party in interest."

In sec. 13.12.585, rewrites (a).

Section 9. New section.

Section 10. New bill section number.

Section 11. New bill section number.

Section 12. New bill section number. In (a), adds a description of how the new bill section 9 changes a court rule. In (e), changes the description how AS 13.12.585 changes a court rule.

Section 13. New bill section number. Adds a reference to the new bill section 9.

If I may be of further assistance, please advise.

TLB:ljw
09-164.ljw

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 16, 2009

SUBJECT: Sectional summary of CSSB 60( ) relating to the Uniform Probate Code (Work Order No. 26-LS0302\E)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM: Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends AS 13.06.120(2), which lists the situations when persons are bound by orders binding others in proceedings under the Uniform Probate Code. Allows a person designated by a trust instrument to represent and bind a born or unborn trust beneficiary. Allows the settlor to designate the person in the trust in various ways. Generally does not allow a designated person serving as a trustee to represent and bind the beneficiaries. Generally does not allow the designated person to represent and bind a beneficiary if the designated person is also a beneficiary.

Also provides that certain persons who represent other persons under AS 13.06.120(2) (A) - (F) are not liable for good faith acts and omissions to the beneficiaries whose interests are represented or to persons claiming through those beneficiaries.

Section 2. Amends AS 13.12.201(b)(9). Makes grammatical and conforming amendments to the definition of "transfer" for certain provisions of the Uniform Probate Code that relate to the elective share of a surviving spouse.

Section 3. Amends AS 13.12.205, which relates to a decedent's nonprobate transfers to other persons. Deletes an irrevocable transfer in trust with a transfer restriction from the property that is included in the augmented estate.

Section 4. Adds AS 13.12.205(b). Provides that the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction if two conditions relating to the trust's settlor and the transfer's timing are met.

Section 5. Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.206(3).

Section 6. Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.207(b).

Section 7. Makes a conforming amendment for bill sec. 4 to a cross-reference in AS 13.12.209(b).

Section 8. Adds a new set of sections that provide for establishing the validity of wills and trusts before death.

Sec. 13.12.530. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.535. Allows certain persons to petition the court to determine the validity of a trust before the settlor's death.

Sec. 13.12.540. Establishes the venue for a petition to determine will or trust validity.

Sec. 13.12.545. Identifies what a petition for will validity must contain.

Sec. 13.12.550. Identifies what a petition for trust validity must contain.

Sec. 13.12.555. Authorizes a court to declare a will or trust to be valid. Declares that the will has full legal effect and must be admitted to probate on request after the testator's death, unless modified or revoked after the court's declaration.

Sec. 13.12.560. Makes the court's validity declaration binding on other persons.

Sec. 13.12.565. Directs the court to hold a hearing after a petition is filed. Requires the petitioner to notify the spouse, children, and heirs of the testator or settlor. For a will, also requires the petitioner to notify the testator, the personal representatives nominated in the will, and the devisees under the will. For a trust, also requires the petitioner to notify the settlor and parties in interest.

Sec. 13.12.570. Establishes the burden of proof for the petitions.

Sec. 13.12.575. Allows a testator to modify or revoke the will after the court's declaration.

Sec. 13.12.580. Allows a trust to be modified, terminated, revoked, or reformed after the court's declaration.

Sec. 13.12.585. Establishes which records related to a petition are public, which are available only to certain persons, and which are confidential. Allows the court to order confidential records to be made available to other persons when good cause is shown.

Sec. 13.12.590. Defines terms for the new article.

Section 9. Amends AS 13.16.055(a). When decedents are not domiciled in this state, allows the first informal or formal testacy or appointment proceedings to be held in the judicial district where certain fiduciaries reside or have a principal place of business.

Section 10. Amends AS 13.16.410. Allows personal representatives to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 11. Amends AS 13.36.109. Allows trustees to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 12. Indicates how certain provisions in the bill amend the court rules.

Section 13. States that those sections that amend the court rules only take effect if bill section 12 is approved by a two-thirds vote.

If I may be of further assistance, please advise.

TLB:plm
09-177.plm

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 17, 2009

SUBJECT: Identification of changes between CSSB 60( ) (26-LS0302\E) and 26-LS0302\A (Work Order No. 26-LS0302\E)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM: Theresa Bannister
Legislative Counsel

This memo is an identification of the changes between W.O. 26-LS0302\A and W.O. 26-LS0302\E. Unless specified otherwise, the references are to the "E" version.

Section 1. In AS 13.06.120(2)(G)(ii) and (iii), "represent or bind" replaces "represent and bind." In AS 13.06.120(3), you'll find a modified version of the non-liability language that was in version A's AS 13.06.120(2)(G)(iv); the E language adds a reference to extend the non-liability to "a person representing another person under (2)(A) - (F) of this section." In AS 13.06.120, the numbering of paragraphs (3) and (4) is changed to (4) and (5). In AS 13.06.120(4), the cross references are changed.

Section 2. In AS 13.12.201(b)(9)(C)(i), "the decedent" replaces "self."

Section 3. No difference.

Section 4. In new sec. 13.12.205(b), the conditions are changed for when the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction. See page 8, lines 7 - 9.

Section 5. No difference.

Section 6. No difference.

Section 7. No difference.

Section 8. In sec. 13.12.530, adds another category to the persons who may petition the court: an interested party with the testator's consent.

In sec. 13.12.540, removes language from (a)(2) and changes the venue rules in (b).

In sec. 13.12. 545, removes language from (11) and removes (14) from version A.

In sec. 13.12.550, removes (11) from version A.

In sec. 13.12.555, removes (b) from version A.

In sec. 13.12.560, removes "Notwithstanding AS 13.06.120" at the beginning.

In sec. 13.12.565(c), removes the reference to AS 13.36 and the last sentence of version A, requiring giving notice to certain other persons. Adds a definition of "party in interest."

In sec. 13.12.585, rewrites (a).

Section 9. New section.

Section 10. New bill section number.

Section 11. New bill section number.

Section 12. New bill section number. In (a), adds a description of how the new bill section 9 changes a court rule. In (e), changes the description how AS 13.12.585 changes a court rule.

Section 13. New bill section number. Adds a reference to the new bill section 9.

If I may be of further assistance, please advise.

TLB:ljw
09-164.ljw

Uniform Probate Code

The Uniform Probate Code (UPC) is a comprehensive statute that unifies, clarifies, and modernizes the laws governing the affairs of decedents and their estates, certain transfers accomplished other than by a will, and trusts and their administration. The UPC was originally approved by the National Conference of Commissioners on Uniform State Laws and the House of Delegates of the American Bar Association in 1969. The purpose of the UPC is to modernize probate law and probate administration and to encourage uniformity through the adoption of the code by all fifty states. The UPC, which has been amended numerous times, has been adopted in its entirety by sixteen states: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. The other thirty-four states have adopted parts of the UPC, but in general the UPC has not succeeded in providing a uniform body of substantive and procedural probate law.

The UPC contains seven substantive articles. Article I contains general provisions, definitions, and jurisdictional topics. Article II governs wills and intestate succession, which occurs when a person dies without leaving a will. Article III deals with the probate of wills and the administration of estates, article IV concerns the probating of estates in states other than the domicile of the decedent, article V extends protection to persons under disability and their property, and article VI governs nonprobate transfers of property. Article VII contains comprehensive provisions on trust administration.

The prime objective of the UPC is to simplify the probate process. For example, article III provides for supervised and unsupervised administration of probate. For estates with few assets and no disputes among the beneficiaries, the UPC allows unsupervised administration. In this case the executor of the will, who is called a Personal Representative in the UPC, handles the probating of the estate without direct supervision by the probate court. The personal representative handles every step of the probate process by filing a series of simple forms with the probate court. Unsupervised administration reduces the cost of probate and speeds up the process. Probate courts are freed from dealing with routine matters and may concentrate their efforts on estates with substantial assets or contested matters, where supervised administration is necessary.

The adoption of the UPC by state legislatures has been fought both by attorneys, who are opposed to unsupervised administration and to the overturning of current state laws governing probate, and by bonding companies, which stand to lose business because unsupervised probate does not require the posting of a bond. In light of this opposition, the Commissioners on Uniform State Laws have developed freestanding acts from similar provisions integrated into the UPC. This technique permits provisions, such as those involving powers of attorney and guardianship, to become law without disturbing other parts of a state's probate code.

Further readings

Averill, Lawrence H., Jr. 2001. *Uniform Probate Code in a Nutshell.* 5th ed. St. Paul, Minn.: West Group.

——. 1992. "An Eclectic History and Analysis of the 1990 Uniform Probate Code." *Albany Law Review* 55 (summer).

Stimmel, Andrew. 2002. "Mediating Will Disputes: A Proposal to Add a Discretionary Mediation Clause to the Uniform Probate Code." *Ohio State Journal on Dispute Resolution* 18 (fall).

West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax (907) 269-0249

SENATOR LESIL MCGUIRE

Chair
Senate Special Committee on Energy
Senate Special Committee on
World Trade, Technology, and Innovations

Co-Chair
Senate Resources Committee

Member
Senate Judiciary Committee
Joint Armed Services Committee

Senator.Lesil.McGuire@legis.state.ak.us

DATE: January 18, 2010

TO: Senator Hollis French, Chair Senate Judiciary Committee

FR: Senator Lesil McGuire

RE: Request to Schedule SB 60: Uniform Probate Code; Trusts, Wills

Dear Senator French,

Please schedule SB 60: Uniform Probate Code; Trusts, Wills for a hearing in the Senate Judiciary Committee at your earliest convenience.

Attached is a bill packet that contains the following:

1. Sponsor Statement
2. Current Version of the Bill: CS SB 60 (26-LS0302\S)
3. A Sectional Analysis
4. Identification of Changes
5. Original Version of the Bill: SB 60 (26-LS0302\A)
6. Fiscal Notes:
   a. Department of Law: Zero fiscal note 3/20/2009
7. Supporting Documents
   a. Uniform Probate Code

A list of people willing to testify for SB 60 will be forthcoming.

Esther Cha in my office will be the staff contact for this bill. Her number is 465-5159. Please call if you have any questions.

Sincerely,

Senator Lesil McGuire

SHAFTEL LAW OFFICES, P.C.
1029 West Third Avenue, Suite 600
Anchorage, Alaska 99501
---
(907) 276-6015
FAX (907) 278-6015
E-MAIL: info@shaftellaw.com
www.shaftellaw.com

Attorneys:
David G. Shaftel, J.D., LL.M. (Taxation)✦●✢
Bhree Roumagoux, J.D., LL.M. (Taxation)✦
Lawrence J. Biskowski, J.D. ✦
Suzanne M. McVicker, J.D. ✦

Legal Assistants:
Jack W. Jacobs
Linda J. Durr, PLS
Terise n'ha Caitriona
Jennifer M. Wright*

✦ Admitted in AK
● Admitted in CA
* Admitted in TX
✢ Admitted in WA

December 10, 2009

To Jnew

Senator Hollis French
716 West Fourth Avenue, Suite 420
Anchorage, AK 99501

Re: Pending Trust and Estate Legislation

Dear Senator French:

Thank you for agreeing to meet with us and discuss pending trust and estate legislation before the Twenty-Sixth Legislature. As you know, we represent an informal group of attorneys and trust officers who practice in the area of estates and trusts in Alaska. We have been working with the Legislature for approximately 12 years in order to recommend improvements in Alaska's estate and trust statutes. We have recommended the following bills and have worked with the Legislature in order to assist in their drafting. The pending bills are as follows:

1. **SB 60 (sponsor: McGuire); House counterpart, HB 144 (sponsor: Ramras)**

In summary, this bill provides for the following:

✓ a. Allows a person who creates a trust to designate a person who will represent incapacitated persons in future proceedings.

✓ b. Updates Alaska's law with respect to an irrevocable trust that has the settlor as a discretionary beneficiary. Specifically, if the trust is created before marriage or with the spouse's consent, then the interest in the trust will not be part of the assets that a surviving spouse can choose to elect against after the settlor's death.

✓ c. Allows a person to have a will or trust validated before death and therefore not subject to challenge based on incapacity, undue influence, duress, fraud or similar claims.

d. Provides venue for probate of a will of a nonresident of Alaska.

e. Allows a fiduciary to consider discretionary distributions as from capital gain. This will allow better tax planning for beneficiaries of estates and trusts.

Status: Both bills were referred to Labor and Commerce and Judiciary. Labor and Commerce committees in both houses have heard the bills and reported them out. Next, to Judiciary for both bills.

2. SB 62 (sponsor: McGuire)

In 1998, Alaska enacted an optional community property system. Several amendments have been made to Alaska's act, and this bill proposes further amendments designed to improve the act. Specifically, the amendments accomplish the following:

a. Adds references to a community property trust in appropriate provisions.

b. Eliminates language stating a confusing statute of limitations and incorporates by reference a new statute of limitations.

c. Provides clarification that property which spouses agree is community property is owned as community property regardless of the form of title to the property. If title to community property is in a form that provides for survivorship ownership between the spouses then the survivorship ownership is presumed to have been made with the consent of both spouses. If one spouse designates a beneficiary for an interest in property, the designation is only effective for that spouse's one-half interest unless the other spouse consents in writing. Various family designations are presumed to have been made with the consent of the other spouse. The testimony of one spouse is sufficient to rebut a presumption.

d. Enacts remedies for improper transfers and limitation periods within which those remedies must be pursued.

Status: Referred to State Affairs and Judiciary. No hearings yet.

3. SB 63 (sponsor: McGuire); House counterpart, HB 146 (sponsor: Ramras)

This bill provides for the following amendments:

a. Clarifies the burden of proof which a creditor must meet to establish that a transfer in trust was done with the intent to defraud a creditor.

b. Clarifies that a spendthrift provision will apply to a trust if distributions are made under the exercise of discretion by a trustee who is not the settlor, whether or not the exercise of the discretion is governed by a standard.

c. Provides that the spendthrift provision in a trust will apply even though the trustee may distribute income or principal to the settlor to pay income taxes.

d. Clarifies that a beneficiary's interest in a trust, whether or not vested, is not considered a factor or economic circumstance in the division of property subject to divorce.

Status: SB 63 referred to State Affairs, Judiciary, and Finance; no hearings yet. HB 146 referred to Labor and Commerce and Judiciary; no hearings yet.

4. Uniform Disclaimer of Interests and Property Act

House Bill 201 was introduced by Representative LeDoux in the Twenty-Fifth Legislature. This bill contained the latest version of the Uniform Disclaimer of Property Interests Act. Our group reviewed this act and made a number of suggestions for changes, which were incorporated into the latest version of HB 201.

It is our understanding that this bill may be reintroduced into the Twenty-Sixth Legislature. As stated above, our group has thoroughly reviewed this bill and recommends its passage.

5. Proposals for a New Bill

Our group has reviewed the following subjects and recommends that they be included in a new estate and trust bill:

a. **Remains Statute.** This provision would clarify Alaska law concerning the persons who are entitled to make decisions about a person's remains after death.

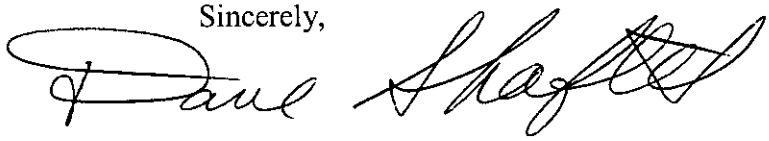
b. **Directed Trustee Statute Improvements.** This provision would clarify Alaska law in regard to allowing a settlor to direct that a trustee may follow the directions of other trustees or advisors, without liability.

c. **Decanting Statute Improvements.** This provision would substantially improve a trustee's ability to make needed modifications to a trust which are the result of errors, changes of circumstances, and similar matters.

d. **IRA Transfers.** This provision would allow the owner or participant of an IRA to make a voluntary transfer of his or her interest in the account. This would facilitate tax planning.

Again, thank you very much for making time to review and discuss these trust and estate matters which are pending before the Twenty-Sixth Legislature.

Sincerely,



David G. Shaftel